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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Satellite Services, Inc.
File: B-225624
Date: March 19, 1987

DIGEST

Contracting agency may properly cancel a solicitation after bid opening where funds may not be available for the option years because of a congressional appropriations restriction, and the competition, involving a cost comparison under Office of Management and Budget Circular A-76, was conducted on the basis of basic and option years requirements.

DECISION

Satellite Services, Inc. (SSI) protests the cancellation of invitation for bids (IFB) No. F04612-86-B-0027, issued by Mather Air Force Base, California. SSI contends that the Air Force's decision to cancel the solicitation 2 months after bid opening is improper because there is no compelling reason to reject all bids. SSI requests reinstatement of the solicitation and also seeks reimbursement of the costs of filing and pursuing its protest, including attorney's fees. We deny the protest and the claim.

The solicitation was issued on June 9, 1986, and, as amended, sought bids to provide maintenance at a golf course for a 7-month basic period (March 1 to September 30, 1987) with 2 option years (fiscal years 1988 and 1989). Award was to be based on the total price for the basic period and the option years. The solicitation also noted that bids were being solicited as part of an Office of Management and Budget Circular A-76 cost comparison. Further, the agency contemplated funding the contract from appropriated funds (75 percent of the total funding) and the remainder from nonappropriated funds.

After the October 10, 1986 bid opening, SSI was determined to be the low responsive bidder. The following is an abstract of the cost comparison results:

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Performance Periods

	I (basic)	II (option)	III (option)	Total
In-house	\$210,889	\$348,339	\$350,356	\$909,584
SSI	\$236,774	\$272,608	\$210,850	\$720,232

Thus, while SSI was low for the total contract period, SSI was not low for the basic period alone. However, under the solicitation's evaluation scheme, SSI was entitled to award since the award was to be based on the total price for the basic period and the option years.

During October 1986, the contracting officer received a message from Air Force Headquarters indicating that Congress had passed an appropriations act (Pub. L. No. 99-591, § 9102, 100 Stat. 3341, 3341-118 (1986)), which provided that "[a]fter September 30, 1987, no appropriated funds may be used to support revenue generating Morale, Welfare and Recreation activities located in large metropolitan areas" The Air Force states that these activities include golf courses and that an Air Force Task Group has been established to study the impact and applicability of these funding restrictions to various bases and activities. Because of the uncertainties concerning the funding of the option years (fiscal years 1988 and 1989) for this procurement, the Air Force canceled the solicitation as "clearly in the government's interest." See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(c)(9), (1986).

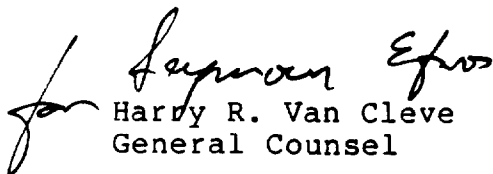
SSI contends that the Air Force's cancellation was arbitrary and capricious. SSI argues that funding uncertainties were already present in the solicitation as issued since the solicitation provided that "[f]unds are not presently available for performance under this contract beyond 87 Sept. 30 [and] the Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds." Moreover, according to SSI, the 2 option periods could only be exercised by the Air Force upon determining that funds are available, that the requirements still exist and that exercise of the options is the most advantageous method of fulfilling the government's needs so that SSI was not entitled to expect an award beyond the basic term in any event. Finally, SSI complains about a 2 month delay in canceling the solicitation and suggests that it is at least entitled to award of the contract for the basic period since the cost comparisons are valid regardless of the ultimate source of funds.

Cancellation of a solicitation after bid opening and the exposure of bids is not permitted unless a cogent and compelling reason for cancellation exists. The determination as to whether such a reason exists is, however, an administrative one to which we will not object unless the protester can demonstrate that the decision was arbitrary, capricious, or not supported by substantial evidence. McGregor Printing Corp., B-207084 et al., Sept. 20, 1982, 82-2 CPD ¶ 240.

Here, depending on the determination of the Air Force Task Group of the applicability of the funding restrictions to Mather Air Force Base, appropriated funds may not ever be available for the option periods of this proposed contract. Since the competition was conducted on the basis of evaluating both the basic and the option periods, we think that this potential lack of funds for the option years, by itself, provides a proper basis to cancel the solicitation despite the standard language in the solicitation about funding unavailability which merely reflects the fiscal year funding cycle of the government. Moreover, as to SSI's suggestion that it be awarded the contract for the basic period, we note that SSI was not low in the A-76 cost comparison for the basic period and the Air Force states that conversion costs would not make award on the basic period alone economically feasible. We therefore find no merit in the protest.

Concerning SSI's claim for costs, our regulations provide for the recovery of costs only where a protest is found to have merit. 4 C.F.R. § 21.6(d) (1986). Since we deny the protest, there is no basis upon which we may grant the protester's claim for costs. See Cellular Products Service, Inc.--Request for Reconsideration, B-222614.2, Aug. 18, 1986, 86-2 CPD ¶ 196.

The protest and claim are denied.


Harry R. Van Cleve
General Counsel